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INVESTING IN POLAND FREQUENTLY ASKED QUESTIONS

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Questions:

INCORPORATING YOUR BUSINESS IN POLAND

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The authors of the below Q&A are Trinity Corporate Services Ltd and Trinity Shelf Companies Ltd , companies which provide outsourcing services in the areas of accounting, payroll and corporate secretarial services to major investors in Poland, Romania and Bulgaria.

It is Trinity Corporate Services intention that the data provided on a subject below, is of a facilitative or informative nature only. Our responses do not represent an exhaustive treatment of subjects, nor is the information intended to constitute accounting, tax or legal advice.

Prior to making any significant decision or taking any action covered by the below text we strongly advise the reader to contact their tax or legal advisors in order to obtain professional advice based on the current legislation for your particular business needs and prevailing market conditions.

QUESTION 1

What are the most common forms of conducting business activity for a foreign investor in Poland?

The most commonly used legal forms available for conducting business in Poland are the following:

- limited liability company (spółka z ograniczoną odpowiedzialnością – Sp. z o.o.)
- joint-stock company (spółka akcyjna – S.A.)
- registered partnership (spółka jawna – sp.j.)
- limited partnership (spółka komandytowa – sp.k.)
- professional partnership (spółka partnerska – sp.p.)
- limited joint-stock partnership (spółka komandytowo-akcyjna – S.K.A.)
- sole proprietorship (indywidualna działalność gospodarcza)

Type of entity	Description/characteristics
Limited liability company	<ul style="list-style-type: none"> • Form of company, legal entity with legal persona; • Established by one or more individuals or legal entities. May not be established as a wholly owned subsidiary of another wholly owned company; • Liable for its debts and obligations with its whole property; normally shareholders are not liable for the company's debts and obligations; • Ultimate authority is a Shareholders Meeting; • Represented by the Management Board (consisting at least of one person) according to principles laid down in a company deed or Commercial Companies Code; • Supervisory Board may be optionally appointed, however it is obligatory if certain conditions are met; • Minimum share capital is PLN 5,000.
Joint-stock company	<ul style="list-style-type: none"> • Form of company, legal entity with legal persona; • May be established by one or more individuals or legal persons, however, it may not be established as a wholly owned subsidiary of a single shareholder company; • May issue bearer shares; • Ultimate authority is Stockholders Meeting; • Represented by the Management Board (consisting of at least three persons); • Supervisory Board is obligatory; • Liable for its debts and obligations with its whole property without any limitations; shareholders are not liable for the company's obligations, but bear a risk up to the value of shares taken up; • Minimum share capital is PLN 100,000.
Registered partnership	<ul style="list-style-type: none"> • Form of personal partnership established for the purpose of operating a business; • Formed by a minimum of two individuals or legal persons; • Each partner is liable without limitation, for the debts and obligations of the partnership, jointly with other partners and the partnership, to the extent of his or her entire assets; • Each partner has a right to represent the company; • No minimum initial capital requirement.
Limited partnership	<ul style="list-style-type: none"> • Form of personal partnership established for the purpose of operating a business, formed by a minimum of two individuals or legal persons; • At least one partner is liable to the creditors for the debts and obligations of the partnership without limitation (the general partner) and at least one partner has a limited liability (limited partner), however, if the business name of a limited partnership includes the name or business name of a limited partner, such partner is liable for the obligations of the partnership without any limitation; • Partnership may be represented exclusively by a general partner, a limited partner can represent the partnership if appointed as proxy; • No minimum initial capital.
Professional partnership	<ul style="list-style-type: none"> • Form of personal partnership established by partners for the purpose of pursuing a profession;

	<ul style="list-style-type: none"> • Partners may be exclusively natural persons authorized to practice the profession, specified in the Commercial Companies Code, e.g.: lawyers, architects, engineers, insurance brokers, tax advisors; • Each partner has the right to represent the partnership; • No minimum initial capital requirement.
Limited joint-stock partnership	<ul style="list-style-type: none"> • Type of partnership established for the purpose of conducting larger-scale businesses, where one partner is liable to the creditors for the debts and obligations of the partnership without limitation (the general partner) and at least one partner is a shareholder and is not liable for debts and obligations of the partnership, however, if the business name of the limited joint-stock partnership includes the name or business name of a shareholder, such shareholder is liable for the obligations of the partnership without any limitation; • May be represented exclusively by a general partner; shareholder can represent the partnership if appointed as proxy; • Supervisory Board may be optionally appointed, however it is obligatory if certain conditions are met; • Initial capital is PLN 50,000.
Sole proprietorship/ sole trader	<ul style="list-style-type: none"> • Essentially refers to a natural person (individual) conducting business in his or her own name and in which there is only one owner; • No limitation of liability; all debts of the business are debts of the sole trader.

Foreign investors may also use the following forms of conducting business activities in Poland:

- Branch;
- Representative Office.

A **branch** is registered in the National Court Register under the name of the foreign investor, together with its legal form translated into Polish, with the extension "branch in Poland". Such branch may only conduct activities within the scope of business of the foreign investor who establishes the branch.

A **representative office** may only conduct activity in the area of promotion and advertising of the foreign investor establishing the entity. No other economic activity may be conducted in this form. Such an office is registered in a register kept by the Minister of Economy. A representative office operates under the name of the foreign entrepreneur, together with the extension "representative office in Poland" translated into Polish.

QUESTION 2

What are the key steps necessary to form a limited liability company in Poland?

- 1) Prior to preparing the Articles of Association, the following preliminary actions should be taken:
 - Choose a name
 - Check the availability of the chosen name in the National Court Register
 - Gather additional information, such as the registered address and objects according to The Polish Classification of Objects (PKD)
- 2) Prepare the Articles of Association in accordance with the Polish legal requirements.
- 3) Open local bank accounts, preferably with Internet access, to allow authorised persons to operate the accounts from day one. Documents requested by the banks vary but generally include:
 - ✓ Set of bank forms signed in front of a bank officer
 - ✓ Excerpt from the National Court Register (KRS)
 - ✓ Articles of Association
 - ✓ Company REGON number certificate
 - ✓ Identification documents

- 4) Pay the amount of initial share capital as per amount defined in Articles of Association (PLN 5,000 is a minimum) to the bank.
- 5) Registration in the National Court Register (KRS):
 - Preparation of the following documents for submission to the KRS:
 - ✓ KRS-W3
 - ✓ KRS-WE
 - ✓ KRS-WM
 - ✓ KRS-WK
 - ✓ Management Board Statements:
 - address of the Management Board
 - list of Shareholder(s)
 - share capital
 - address of Shareholder(s)
 - PESEL if shareholder(s) or Board Members are foreigners; if available
 - ✓ Articles of Association of new Polish company - original
 - ✓ Specimen signatures of the Management Board Members (notarised and apostilled)
 - Payment of PLN 1000 for registration of the company and PLN 500 for publishing in Monitor Sądowy i Gospodarczy.
- 6) Registration in the Statistical Office (GUS):
 - Preparing of document RG-1 to submit to the REGON department in the Statistical Office
 - Documents requested by REGON registration:
 - ✓ RG-1 form
 - ✓ KRS excerpt of the new Polish company
- 7) Preparation of the following documents:
 - Title to registered address in Poland (title of ownership or lease agreement)
 - Share Register
- 8) Registration in the Tax Office:
 - Documents requested for the purpose of registering with the tax authorities:
 - ✓ NIP-2 and VAT-R forms (or others if necessary)
 - ✓ Set of bank forms and confirmation letter from the bank that the account is already opened
 - ✓ Title to registered address (ownership or lease agreement)
 - ✓ Articles of Association
 - ✓ KRS excerpt of the new Polish company
 - ✓ Regon certificate
 - ✓ Payment of PLN 152 to the account of the Tax Office

NOTE: As from April 2009, motions to the Statistical Office and to the Tax Office to obtain REGON, NIP and VAT number are submitted together with the KRS application to register the entity.

QUESTION 3

What are the key steps necessary to form a branch office in Poland?

Foreign entrepreneurs may set up a branch office in Poland, based on the principle of reciprocity.

According to Polish law, the following steps must be undertaken in order to establish a branch office in Poland:

- Pass a resolution providing consent for setting up the branch in accordance with the laws applicable to the head office;
- Appoint a Branch Office Manager to represent the entity;
- Register the branch in the register of entrepreneurs in the National Court Register;
- Open a bank account;

- Register for tax purposes;
- Obtain a tax identification number (NIP) and a statistical number (REGON);
- Notify the relevant social security authorities.

A foreign entrepreneur who plans to set up a branch should also be aware of and consider the following issues:

- 1) the branch may only conduct similar activities to the foreign ("Head Office") company, which means that the scope of activity of the branch can be narrower than the Head Office but cannot be broader;
- 2) the branch office must use the original name of the foreign entrepreneur together with a Polish translation of the legal form of the entity and the extension "Oddział w Polsce" (Branch office in Poland);
- 3) maintain separate accounting records in Polish in accordance with the provisions of the Polish Accounting Act.

QUESTION 4

What is the difference between a branch office and representative office in Poland? If we don't elect to set up a limited liability company, is a branch or representative office more suitable for our business model?

In general a branch allows a company to conduct business activities in Poland similar to its head office. A representative office however, is for marketing purposes only.

Branch Offices

A branch office does not have a legal persona. It is considered to be a constituent part of a foreign enterprise and may only carry on the same business as the head office abroad. It is required to use the foreign entrepreneur's official name, together with the translation of its legal form into Polish and the extension "branch in Poland". The branch office must appoint a person in Poland who will represent this entity (Branch Office Manager).

A Branch Office is however required to maintain a set of accounting records in Polish in accordance with the Polish Accounting Act and comply with monthly and annual tax reporting for VAT and corporate income tax.

Representative Offices

The scope of activities which a representative office is allowed to pursue is very limited. Such entities are established for the purpose of advertising and promoting the business of the foreign entrepreneur which opened the representative office. They should avoid any business activities. A representative office must also appoint a person to represent it in Poland and must use the name of the mother company, together with the translation of its legal form into Polish and a supplement "representative office in Poland".

A Representative Office is required to maintain a set of accounting records in Polish. There are less stringent tax considerations and compliance issues because of the nature of the business. Input VAT will be non recoverable as such entity has no income, while an annual corporate income tax return as a minimum, must be completed and submitted.

QUESTION 5

Approximately how long does it take to establish a limited liability company in Poland?

To some extent the answer to such question depends on what is considered the "establishment of a legal entity".

In legal terms this would be considered the registration of the articles of association with the Court and as such could be a matter of 3-4 weeks. This assumes in general a smooth process; all the preliminary documents are available and accurately completed.

However, such entity has certain other formalities to complete before it can be considered fully functional and in general compliance, namely the setting up of bank accounts and registration with the tax and other authorities.

To have what could be termed a fully functional and compliant entity, the whole process to completion, which covers setting up and registering the limited liability company with the National Court; the drawing up of the articles of association; registration with the court, tax and statistical authorities; opening of the company bank account and registration with the Social Security authorities, if necessary, should not exceed a maximum of three months and could be completed in one and a half months.

Companies considering such timescale as restrictive for their planned investments should consider the shelf company option.

QUESTION 6

Can I purchase a shelf company in Poland to speed up the process?

Yes. According to the Polish commercial law every natural person and every legal person can purchase a ready-made limited liability company established according to the Polish law. The limited liability company is the most popular way of conducting business activities here in Poland.

When choosing a provider of such shelf companies it is recommended that only a reputable provider is used, to ensure no prior economic history and that extensive warranties and guarantees are provided. There are a couple of such companies on the market.

The best way to find such company is to ask a professional local law firm, which has experience in commercial law and which cooperates with verified and trusted companies providing ready-made companies to its clients. In the process the law firm will perform some due diligence procedures on the entity to verify full compliance and zero or no risk of any liabilities, or claims. They will also review the Share Purchase Agreement with the provider to ensure that the warranties and guarantees covering the transfer are sufficient.

On transfer the new owner should be in a position to conduct transactions immediately. To make the transfer process quicker and easier the purchaser might act by way of proxy on the basis of a power of attorney granted to a reliable partner.

We suggest purchasing ready-made limited liability companies from a professional, experienced and reliable provider such as Trinity Shelf Companies Sp. z o.o.

QUESTION 7

Can I conduct business immediately upon purchasing a shelf company?

Yes. Business activity with the acquired entity can commence immediately after the transfer of shares. The management board can also be immediately changed and commence activity armed with the shareholders resolution confirming their appointment. According to the Polish Commercial Companies Code the company is obliged to register all changes in the company with the National Court Register namely; new shareholder, new management board members, new address, etc. within 7 days from the event.

The new shareholder should also remember to gain immediate control of the bank accounts by amending the bank signatory card and fulfilling any other bank notifications required in regard to the changes. The new shareholder should also inform the tax and statistical authorities about changes that took place in the company during submission of all required documents; however such notifications and changes do not restrict the commencement of business activities.

QUESTION 8

Explain how the Register of Entrepreneurs (KRS) works and its importance in day-to-day business.

The Register of Entrepreneurs is a part of the National Court Register, which also consists of the register of associations, other social and professional organisations, foundations, public health institutions; insolvent debtors. It was created and is maintained in accordance with the National Court Register Bill of August 1997.

The Register of Entrepreneurs is managed by competent departments of the district courts. The registration court processes cover various entities, the most popular being limited liability companies and commercial partnerships.

The Register of Entrepreneurs is open to the public. Information is accessible via the Central Information Bureau of the National Court Register, maintained by The Minister of Justice, in the form of legalised copies and excerpts. Such excerpts are valid for a period of three months from date of issue.

Each entity registered in the court records acquires a unique number (KRS No) under which all information is stored. Registered data is divided into six sections:

Information held in the Commercial Register System:

Section 1.

General information on the entity

- a) Commercial name,
- b) Entity's legal form,
- c) Registered seat and place of conducting the business activity,
- d) Details of any branches
- e) Previous registration number in the commercial register or register of businesses,
- f) Statistical Office (REGON) and tax identification (NIP) numbers,
- g) Details of shareholders and shareholding - excluding minority shareholders holding less than 10% share capital in a limited liability company,
- h) Share capital of the company and detailed information connected with the nature of contributions,
- i) Share specification – number and nominal value of company shares,
- j) Specific information regarding individual rights, profits and obligations in the company,
- k) Changes of company statutes and any subsequent amendments.

Section 2.

Representation

- a) Body authorised to represent the company and indication of its members,
- b) Nature of company representation (e.g. solely, jointly),
- c) Existence of supervisory bodies,
- d) Details of any Commercial Proxies and scope of their authority.

Section 3.

Scope of business activity

- a) Submission of the annual financial statements,
- b) Auditor's reports,
- c) Approval by Shareholders of the management activity report and financial statements,
- d) Shareholders resolution regarding the distribution of profits and losses.

Section 4.

Claims

- a) Information on outstanding tax and other payments,
- b) Company creditors indication and claims secured with a writ of execution not satisfied within 30 days of due dates,
- c) Information regarding enforcement of administrative and court decisions; levying and discontinuance of enforcement proceedings.

Section 5.

Trustees and liquidation proceedings

- a) Details of any motion to appoint or dismiss a trustee.

Section 6.

- a) Information about opening and termination of liquidation proceedings,
- b) Appointment of a company liquidator,
- c) Information of company dissolution or invalidation;
- d) Merger, division, reorganisation of the company,
- e) Information concerning conducted restoration or bankruptcy proceedings of the company.

A limited liability company is entered in the register upon an application made by its management board. Any changes to the data shown in the register must be submitted to the court and entered in the register. Generally, motions to the National Court Register are to be submitted within 7 days from the occurrence

of circumstances requiring such amendments. A company which does not meet such obligation exposes itself: to a fine; appointment of a trustee; or even company dissolution (if the delay is excessive and concerns the most crucial information for third parties conducting business with the entity, or the public authorities).

Motions submitted to the National Court Register must be filed using the correct public forms. Applications are processed by the court within 7 days. The process ends with the issuance of a court decision.

QUESTION 9

Do the directors of a limited liability company have to be Polish citizens/residents?

No. The Commercial Companies Code does not introduce any restrictions on nationality of persons qualified to fill the post of director in a limited liability entity. Such person must be a natural person, should not be incapacitated to perform such role and should not have a record of any restricted offences as listed in the Code.

QUESTION 10

Is there a minimum number of directors required in the Management Board of a limited liability company?

No. The Polish Commercial Companies Code states that: "the management board shall be composed of one or more members."

In other words the minimum number of directors is actually one natural person and no maximum for the number of management board members. Corporate bodies may not hold such posts in Poland.

If the management board consists of more than one member, the rules of representation should be stated in company's Articles of Association, otherwise the standard rules of the Commercial Companies Code shall apply i.e. the company is represented by two of the management board members acting jointly, or one management board member acting jointly with the company's duly appointed commercial proxy.

QUESTION 11

Can a legal entity be a director of a Polish limited liability company?

No. According to Polish law, only a natural person can be a director of a Polish limited liability company.

QUESTION 12

What are the common risk areas as regards being a director of a limited liability company?

Civil Liability

In regard to the debts of the company, creditors' claims are limited to the company's assets. The company's shareholders and Management Board in a normal situation have no personal liability connected with the company's obligations. However, according to art. 299 of the Commercial Companies Code, Management Board Members are jointly and severally liable for the company's obligations should the company be unable to repay such. Members can release themselves from such liability if:

- they can prove that a motion for bankruptcy was filed in due course,
- a recovery procedure was introduced in due course,
- a possible lack of filing of bankruptcy motion or introduction of recovery procedure was not their fault or
- regardless of the lack of a bankruptcy motion or recovery procedure introduction, the creditor has not suffered any damages.

Criminal Liability

The Commercial Companies Code stipulates that management board members face criminal charges in the event of certain negligence e.g. failing to submit a declaration of bankruptcy in due course etc.

QUESTION 13

Are there any permits or licenses required to run a business in Poland?

The general rules governing the undertaking and pursuing of economic activities in Poland are governed by the Freedom of Economic Activity Act of 2nd July 2004. In general, the Act also applies to foreign investors, with consideration taken of the existence of any reciprocity rules in place between the two countries. Foreign investors who have the right of residence in Poland (or similar), may conduct economic activity on the same terms as Polish citizens.

Foreign investors from countries applying the reciprocity rule may conduct economic activity (unless international agreements state otherwise) on the same terms as entrepreneurs with the right of residence in Poland.

Other foreign persons have the right to undertake and run a business activity in the following forms:

- limited partnership
- limited joint-stock partnership
- limited liability company
- joint-stock company

Furthermore **foreign companies** may run a business activity in the form of a branch office or set up representative offices for marketing purposes in Poland.

There are six specific categories of business for which a permit/concession is required. These categories include for example, amongst others, business relating to the power and energy field, air carriers and radio and television activities. As regards concessions, often a tender process is involved.

Whilst the process has been simplified in recent years, regulated entities need to fulfil certain legal requirements and obtain any necessary licenses. On completion of the process a certificate confirming satisfaction of the requirements is issued.

QUESTION 14

Will I need a special permit to provide recruitment services in Poland?

Yes. The activity of recruitment agencies in Poland is governed by the provisions of the Employment Promotion and Labour Market Act, dated April 20th, 2004, with further amendments. According to this Act, business activities such as recruitment agencies, personnel consultancies, occupational consultancies or temporary employment agencies need to be registered and obtain a license to provide such services, from the Marshall of the region.

This requirement also applies to foreign entrepreneurs which have permission to run such business in other EU member states.

Such requirement does not apply to similar businesses, which temporarily, for up to 3 months in total per year, intend to render recruitment agency services in Poland. However, they are still required to provide information and documentation to the regional Marshall about their foreign and local entities, and amongst other information, notarised and sworn translated documents confirming their right to perform such services in the country of origin and details of the issuing authority.

An entity, applying for the first time for entry in the registry of entities running recruitment agencies, is granted an initial certificate valid for one year.

QUESTION 15

How can I provide further funding to my limited liability company?

Additional funding for a limited liability company can be provided in many ways, the more common being: an increase in share capital, additional payments per the articles of association, or loans.

A legal or tax advisor should be consulted prior to transferring any funds to ensure that the proper supporting documentation is in place and in the worst case scenario to avoid that receipt of funds is deemed as taxable income by the authorities and further penalties imposed for late payment of taxes. Loans should always be on commercial terms with supporting related party transaction documentation, if applicable.

Shareholders should be aware that stamp duties generally apply in all cases.

QUESTION 16

What most commonly used official business records or databases are available to the public in Poland?

There are several common official business records in Poland: (i) National Court Register, (ii) Business Activity Register, (iii) REGON, (iv) Land Register, (v) Pledge Register,

(i) The National Court Register is a database composed of three separate registers:

- Register of Entrepreneurs,
- Register of Associations,
- Bankruptcy Register

Since all registration requirements must be fulfilled before an entity is allowed to commence business activities, the database useful source of information for third parties. (Refer Q6 above for more information on the Register of Entrepreneurs).

The Register of Entrepreneurs includes details of the following persons and business entities:

- natural persons engaged in business activities
- commercial companies
- co-operative associations
- state enterprises
- research institutes

- foreign enterprises
- mutual insurance associations
- branches of foreign entrepreneurs
- others if conducting commercial activity and are not subject to entry in the Register of Associations

The Register of Associations includes details of the following associations and non-profit organisations:

- foundations
- social- professional farmers organisations
- certain types of chambers (economy, handicrafts)
- guilds
- Polish Handicraft Association
- certain types of associations
- certain types of trade unions (employers, individual farmers)
- certain professional self-governing units
- health service transport
- public health service institutions

Bankruptcy Register:

The bankruptcy register includes details of insolvency proceedings, subsequent rulings and writs over individual debtors.

(ii) Central Registry and Information on Business Activity (CEIDG)

The Central Registry and Information on Business Activity is for individuals (natural persons) intending to start business activity in the legal form of a proprietorship. EU nationals and members of the European Free Trade Association can start and conduct business activity in Poland under the same rules as Polish entrepreneurs. The Central Registry and Information on Business Activity is in the form of an electronic system and maintained by the Ministry of Economy.

Entry in the Central Registry and Information on Business Activity is relatively simple and free of charge. The obvious drawback being that the entrepreneur has no limitation of liability, as would be the case if conducting business through a limited liability company. Such operation also has limited credibility.

Activities are taxed under Personal Income Tax (PIT) regulations.

(iii) REGON- Country Official Register of Units of the National Economy

The Regon is the National Official Business Register. The Regon register is a real time database holding information on businesses by classification and cross-section in the national economy.

Entry into the Regon register is obligatory for all:

- legal persons,
- organisational units without the status of a legal person,
- natural persons running business activities (including private farms),
- local units of the above persons/entities.

The register contains the following information:

- name and address of head office, and with natural persons running business activities - full names, place of residence and identity card number (PESEL),
- legal form and propriety form,
- activities performed, including main activity,
- dates of establishment, commencement, suspension and termination of business,
- name of registering or recording agency, name of register (record) and ID number issued by this agency,
- other, e.g. number of persons employed in the case of private farms, communal areas and cultivated areas and other local units.

Each entry receives a unique 9 digit ID/REGON number. Businesses entered in the register are obliged to use the ID number in official business communication and it should be disclosed on company stamps and official forms or stationery.

(iv) The Land Register records details of the legal status and ownership of properties as registered by the government thus providing evidence of title to facilitate, for example, real estate transactions.

The Land Registry, as an official register, is used for the registration of the right to the property and others rights related to real estate as well as any easements upon them. The major function of the Land Registry is to create a reliable legal basis guaranteeing the certainty of title and a reliable basis for contracting long-term mortgage credit. It is maintained by the relevant departments of the district courts with jurisdiction.

Land registers are open to the public at the court. Details are presumed as valid. Proprietary rights entered in the land register have higher priority than rights not entered in the registry. Details shown in the land registry include: property description, rights connected with property, owner or perpetual usufruct, limited proprietary rights, disposal restrictions, personal rights and claims on encumbered property and mortgages.

(v) The Pledge Register is a registry of registered pledges. Such pledge is created from the moment of registration of the pledge. The information is public. There are two presumptions connected with this registry: *presumption of awareness of the registry data and presumption of accuracy*.

The Pledge register is maintained in the form of a computer database by business district courts and includes the following information:

- 1) Date of pledge application submission
- 2) Data of Pledgee, Pledger and Debtor
- 3) Registered pledge subject
- 4) Receivable amount
- 5) Manner of the pledgee relief
- 6) Pledge subject to non disposal or encumbrance reservation

QUESTION 17

What is the more common jurisdiction for an investor to use as a holding company for a Polish SPV?

The choice of holding company jurisdiction is particular to the individual investor. Choosing the appropriate holding company jurisdiction allows investors to maximize tax relief, or delay tax payments, whilst still adhering to applicable laws. Savings typically relate to withholding taxes on interest and dividends and corporate or personal income tax on profits.

The most common jurisdictions for a holding company of a Polish SPV are Cyprus, Luxembourg, the Netherlands and Austria.

The costs of the structure in the chosen jurisdiction should be considered in relation to the benefits. Complex structures are expensive to maintain. Due to the complexities of the subject a tax advisor should be consulted.

QUESTION 18

Are electricity compliance certificates required when purchasing a property?

On October 15th, 2009 a new regulation regarding electricity compliance certificates came into force. When purchasing real estate in the form of single dwelling houses, residential buildings and office buildings, each property is required to have such a certificate. The scope of the regulation is included in the construction law (legal act dated August 27th, 2009). This new regulation is based on the implementation of European Union Directive number 2002/91/WE dated December 16th, 2002 regarding the compliance of electricity requirements of buildings.

In case of foreign clients who purchase real estate in Poland, this regulation is essential and such certificate must be included in the Articles of Association prepared by the notary when purchasing the real estate.

QUESTION 19

When should a Management Board Member submit a motion regarding a company's insolvency?

According to current legal provisions and the bankruptcy law, a management board member should submit an insolvency motion within two weeks from finding out about any risks regarding the financial situation of the company. This opinion was confirmed by the Provincial Administrative Court (Reference no. akt I SA/OI 443/2009). If the remaining board members can prove that he is not liable for not applying the motion within the above mentioned two weeks, he may be dismissed from this liability.

QUESTION 20

When does a shareholder in a joint stock company have limited voting rights at the Annual General Shareholders Meeting?

In accordance with the Amendments to the Commercial Companies Code of May 21st, 2009 (the legal act came into force on August 1st, 2009), the new regulations may be included in the Statute making up the Articles of Association (AoA) of a joint stock company. These regulations may be implemented in the AoA and may limit the vote of shareholders who have more than 1/10 of the voting rights at the Annual General Shareholders Meeting. The votes of pledgees, usufructuary or other legal titles can be added to shareholder votes. The limitation may also concern other persons who have the right to vote as pledgee, usufructuary or other legal title.

The previous legal provisions stated that the Statute may limit the votes of these persons who hold 1/5 of the votes in the company, therefore, per the new provisions, the percentage threshold is now lower.

QUESTION 21

Is a Limited Partnership an interesting way of conducting business in Poland?

A Limited Partnership (LP) is a special type of partnership which is very common when people need funding for a business. It is a partnership which runs its activity under its own name, in which the liability of at least one partner (general partner) is unlimited while the liability of the other partner or partners (limited partners) is limited to the limited liability amount. There is no minimum start-up capital.

What are the tax benefits of an LP:

- **Limited responsibility** of a Limited Partner in an LP. This applies also to the potential tax arrears of an LP.
- **Avoiding double taxation.** Profits are reported on the partners' personal tax returns (pass through taxation). There is no need to prepare CIT calculations/reports as an LP is not a taxpayer of Polish CIT (avoidance of double taxation of the income - first time on the company level, second time on the partner level). Taxable income and tax deductible costs of LP's are reported by its partners only. Nevertheless, an LP must calculate/pay other common taxes (VAT, CLAT, RET, etc.).
- **Making use of an LP tax "loss"** by its partner by creating a quasi-tax capital group of two or more LP's. Such a group is treated as a single taxpayer, i.e. partner(s) of such group pays CIT on the consolidated tax results of the LP's belonging to the group. Acting through such a group gives some tax optimisation possibilities (e.g. there is no need to wait 1 year to utilise up to 50% of the tax loss) plus it mitigates the general transfer pricing risk.
- **Step -up.** Increasing the asset's value for tax depreciation purposes (higher taxable costs). This is possible because of the in-kind contribution of the asset to an LP, and its initial value can be determined by the partner(s) up to its market value. There are also some additional circumstances to consider here: i.e. a step-up does not apply to in-kind contribution of an

enterprise, its neutral tax effect for the partner is sometimes questioned by the tax authorities, etc. What is important, our Ministry of Finance recently changed its general approach towards step-up's claiming that the above mentioned increase is not possible.

QUESTION 22

Do I need to keep accounting records for my business in Poland?

Yes. The Polish Accounting Act requires that accounting records are kept by entities at the registered address of the company, or place properly notified to the tax authorities (e.g. an accounting office), in Polish and in accordance with the Accounting Act. Whilst accounting records must be kept in Poland it is unclear where the server should be located. This subject should be discussed with an advisor if a centralized server is held outside Poland.

In essence the tax authorities need to be able, on request, to enter the premises where the records are kept and review the records and all supporting documentation, in the Polish language. They may request that certain foreign language documents are sworn translated into Polish during such investigation or audit.

QUESTION 23

Will I need a fiscal register to conduct my business?

Yes – in certain circumstances. According to the Polish VAT regulations there is an obligation to record revenues using fiscal registers in specific situations.

A VAT payer is obliged to use a fiscal cash register if sales are made to:

- Natural persons not conducting a business activity
- Lump-sum tax farmers (all purchases).

To facilitate the business activity of small entrepreneurs, legislators introduced an exemption from this obligation if turnover is under the limit of PLN 40,000 a year (although there is a list of exemptions to this limit). There is also a list of activities which are exempted from the obligation to use fiscal registers under the condition that turnover from such exempted activity constitutes more than 70% of total turnover in the enterprise.

The tax payer has an obligation to record transactions in the fiscal register even if a customer requests an invoice. This means that the receipt from the fiscal register and invoices are not substitute documents.

All fiscal registers need to be registered in the Tax Office, together with their address, within 7 days of installation.

Registers should meet specific technical requirements and tax payers using fiscal registers should store all print-outs from the registers for a period of 5 years.

QUESTION 24

What are the basic regulations as regards Corporate Income Tax (CIT) in Poland?

According to the Polish Corporate Income Tax Act, companies pay tax at a rate of 19% of taxable profit, being the difference between taxable income and tax deductible costs.

Not all costs can be treated as tax deductible. The most frequent examples are:

- unpaid interest on loans and trade liabilities;
- negative exchange rate differences on valuation;
- expenses for representation (gifts for clients, wining and dining, etc);
- unpaid salaries;

A whole list of such non deductible costs is included in article 16 of the CIT Act.

CIT advances are calculated and paid monthly by the 20th of the following month; advances for the second to last month are paid as a double amount. A company is obliged to submit annual returns (CIT-8) three months after the fiscal year end. Should a tax payer notice a mistake in his returns or calculations, they are obliged to prepare a correction of the declaration/calculation and if necessary pay the liability together with interest. Tax losses can be settled within the next 5 years but only 50% of the loss deducted in any one year.

The CIT Act also introduces Polish withholding taxes on payments to foreign entities such as: dividends (19%), interest (20%) and royalties (20%). Under certain conditions these rates can be decreased in accordance with EU Directives implemented to the Polish regulations or the double tax treaties.

A company concluding transactions with related entities may be obliged to prepare specific transfer pricing documentation of such transactions. If no such documentation is presented, the positive difference between the company's income determined by the tax authorities after review of such transactions and that declared by the taxpayer may be subject to a tax rate of 50% instead of the standard 19% rate.

All tax deductible costs should be properly documented with invoices or agreements and should be incurred in connection with generating income or securing its source.

QUESTION 25

What are the basic regulations as regards VAT in Poland?

According to the Polish Value Added Tax Act, the basic rate of VAT is 22%, however there are groups of products which are taxed at lowered rates of 7%, 3%, 0%, or considered exempt.

Monthly VAT returns and payments are calculated and submitted by the 25th of the following month. According to the amended VAT Law from the year 2009 the taxpayers are allowed to submit a quarterly VAT return, however the payment of VAT must be done on a monthly basis. The amount settled with the tax office is the difference between output and input VAT.

Input VAT is generally deductible in the period (month or quarter) the invoice is received or in the following two subsequent accounting periods (months or quarters), however there are groups of goods or services with other time limits for VAT deduction. There is also a list of products, for example fuel for cars, which are exempted from the right to deduction of the input VAT.

The excess amount of input VAT over the output VAT can be recovered within 60 days from the date of filing a tax return, irrespective of the character of the acquisition. This limit in special cases can be shortened to 25. The tax refund is available also for companies not making taxable sales within the tax period. Nevertheless, in such a case the deadline for a VAT refund is extended to 180 days unless the taxpayer provides a guarantee by way of deposit to the fiscal office to use the 60 day term.

All transactions involving VAT should be supported by VAT invoices, which should adhere to specific formal requirements.

Should a tax payer notice a mistake in their monthly/quarterly returns, they are obliged to prepare a correction of the declaration and if necessary pay the liability together with penalty interest.

The tax office has the option to audit tax returns up to 5 years from the end of the year in which the transaction took place. During such tax inspections there is no possibility to correct the returns. Any underestimation in the VAT liability or overestimation in the VAT repayment can be penalised based on the provisions of the Polish fiscal penal code.

QUESTION 26

What are the typical situations triggering a tax audit?

There are some specific areas that are more often exposed to audits by tax authorities in Poland; these are mainly sectors connected with oil, fuel and scrap metals.

The most common audits are VAT related. The most common event triggering a tax inspection in Poland, is an application for a VAT refund, especially if the amount is over a few hundred thousand zlotys. If the VAT claimed is lower, or the refunds made on a continual basis, the tax authorities may instead of undertaking a detailed investigation, conduct a limited review, namely by requesting selected documents.

In addition, the tax authorities may want to verify whether a company's VAT records/accounts tie in with what has been reported on the tax return of its business partner. These cross-checking procedures are usually aimed at confirming if the two cooperating entities submitted the same documents on which they based their tax calculations. These checks are usually quick, easy and not very time consuming.

Businesses constantly incurring tax losses may also become the subject of the tax authorities' interest or concern. The authorities assume correctly that a business exists to make profits and may decide to try and identify transactions or activities which they consider as creating tax losses in an attempt to minimise their tax liabilities. Exercises in tax avoidance should be in line with tax regulations. A useful way to ensure that an entity is interpreting the regulations correctly is by applying to the tax authorities for a tax ruling, which confirms or denies that the entity's approach is correct. Such ruling is binding until rescinded.

The tax authorities can also become interested in an entities activity if frequent corrections to tax returns are filed, especially if the numbers change significantly.

Under Polish law, accounting and tax records are required to be maintained in Poland, in the Polish language at the registered address, or place properly notified to the authorities. During an audit very tight timescales are set for taxpayers to respond to any queries. Failure to respond on time, inadequate or incomplete documentation, or improper accounting records may prolong the tax inspection procedures, cost more and postpone any tax refund. The Management Board has personal responsibilities and liabilities in such matters.

Working with an experienced provider with extensive experience of tax inspections is very useful and less stressful. Preparation for an inspection, typically before requesting a large VAT refund, is highly recommended.

QUESTION 27

What other most common taxes need to be considered when conducting business activity in Poland?

Apart from the taxes described above (VAT, CIT and PIT) there are also other taxes to be considered in Poland:

- Tax on civil law transactions or stamp duties;
- Inheritance and donation tax;
- Excise duty;
- Local taxes and fees including real estate tax and automobile tax;
- Agricultural property tax;
- Forest property tax.

QUESTION 28

How can a limited liability company recover VAT in Poland?

The general rule is that taxpayer can recover VAT. Input VAT (on purchases) is recovered by being deducted from output VAT (on sales) whilst any excess of input VAT over output VAT can be carried forward against future output VAT, or refunded on the taxpayer request.

In order to apply for a VAT refund the taxpayer must declare so in the monthly/quarterly VAT return.

According to the Polish VAT Law the standard deadlines for tax authorities to refund VAT are as follows:

- 60 days – the general rule
- 180 days– for companies not making taxable sales within the tax period unless they provide a guarantee by way of deposit to the fiscal office to use the 60 day term

In specific situations, the above deadlines can be accelerated to 25 days accordingly.

The general rule is that VAT is refundable to foreign entities on their application if such VAT would also be deductible for VAT taxpayers registered in Poland for VAT purposes. It should be underlined that non-EU taxpayers are eligible for VAT refund subject to reciprocity rule. As from 2010 it is possible for companies to reclaim foreign VAT electronically in their own member state. A company will no longer be obliged to file a VAT refund claim in each member state where it incurred VAT. The resident member state will forward the VAT refund claims electronically to the member states concerned.

QUESTION 29

Is a statutory financial audit required for a limited liability company?

The Polish statutory financial audit requirements apply to limited liability companies which in the financial year preceding the year for which the financial statements is prepared fulfilled at least two of the following three conditions:

- Annual average employment is at least 50 employees in full time employment equivalent;
- Total assets value – PLN equivalent of EUR 2 500 000 or more;
- Net income from the sales and financial income for the financial year is the PLN equivalent or greater than of EUR 5 000 000.

In a merger situation, financial statements of the acquirers or newly-formed companies, formed for the merger in the financial year in which the merger took place, should also be audited regardless of the above limits.

QUESTION 30

Do the Polish accounting standards (PAS) differ from international financial reporting standards?

The Polish Accounting Act and supporting legal acts are in general intended to be based on International Accounting Standards. As a consequence, the principal rules of both regulations do not differ significantly. It should be noted however, that IFRS are constantly developing while the Polish Accounting Act is amended only occasionally. Moreover, IFRS and their interpretations give much more detailed "instructions" for accountants than the Polish standards. Consequently, there are issues which are not regulated at all in the PAS but which have a clear description in the IFRS. In such cases, Polish entities are allowed to act according to international standards.

Traditionally accounting records in Poland were kept purely for tax purposes. This practice is still evident when dealing with smaller, local accounting offices. The concept of management information is limited. Professionally run outsourcing operations should understand that the tax returns are a by-product of the business operations and not the other way around. Changes have been made by the authorities to the format of financial statements and notes which clearly are of little use to the average user and purely to give limited assistance to the tax authorities. An example is the excessive disclosure of related party transactions in the Financial Statements.

To some extent, Polish standards, like the IFRS, provide the entity with a choice of accounting rules they wish to use. The Chart of Accounts is not prescribed as in France for example, although certain accounts are necessary. The fair value concept, introduced in the IFRS, is also allowed in particular cases. However, in practice, historical cost valuation is more commonly used in Poland due to tax reasons.

The list of differences between the IFRS and PAS, mostly related to detailed solutions applied and complex issues, can be very long. It has to be individually judged what really applies to a particular Company. Based on Trinity's experience, in most business cases, it is possible to implement the same rules for statutory and group reporting (IFRS), to avoid the need for future reconciliations. The tax computation does not require a separate set of accounting records. It should be noted that the accounting principles should be individually chosen for the Company business to satisfy the overriding goal of the highest quality of financial statements.

One of the most important differences between Polish and international standards are the requirements concerning the presentation of financial statements and required disclosures. According to the Polish Accounting Act, the reporting template is imposed by law. Additionally, the presentation, grouping of some transactions and disclosures are clearly stated and the choice is very limited here. In principle the same rules apply to all companies regardless of the size and business conducted. IFRS give more general guidelines and the accountants need to work out solutions suitable to the company's operations.

Moreover, the Polish Accounting Act, apart from the valuation and presentation issue, quite strictly regulates the matters concerning accounting itself, such as the rules for bookkeeping and stock taking, the preparation of financial statements, audits and data protection.

Good news for Polish companies with foreign capital is that they are allowed to implement IFRS for statutory purposes if the parent companies prepare their consolidated financial statements in accordance with these standards. The pros and cons should be individually analysed.

QUESTION 31

What are the general regulations concerning financial year end?

At the financial year end a company needs to arrange internally, or through its provider, the following:

- Preparation of a set of Polish Financial Statements in the local currency;
- Preparation of the Activity Report by the Management Board covering items such as a description of the significant events which occurred during the financial period, post balance sheet events, current financial position, any R&D, financial plans for the future, significant achievements, financial risk etc.
- Approval by the shareholders of the above Financial Statements and Activity Report;
- Submission of the above documents to the tax office;
- Submission of the above documents to the National Court Register (KRS).

The financial statements should be prepared within 3 months and approved within 6 months of the year end. They should be submitted together with any necessary enclosures to:

- Tax office – within 10 days from the date of their approval;
- Commercial Register (KRS) – within 15 days from the date of their approval.

In addition to the above, the annual tax return (CIT-8) should be submitted to the tax office within 3 months of the end of the financial year.

QUESTION 32

What are the basic regulations as regards Personal Income Tax (PIT) in Poland?

The detailed regulations governing individual areas of personal income tax are contained in the Law of 26 July 1991 on personal income tax (consolidated text: Journal of Laws of 2000 No. 14, Text 176 with further amendments),

In Poland there are three tax brackets:

Taxable income in PLN		Tax bracket
over	to	
	85.528	18% minus the amount of PLN 555,96 (that minimizes the income)
85.528		PLN 14.839,02 + 32% of excess over PLN 85.528

The Polish Tax Authorities provide certain allowances and costs to reduce the tax liability.

The amount of annually tax relief is PLN 555,96 (monthly PLN 46,33).

Income related costs depend on the employment relationship, whether based on an employment relationship, co-operation contract of employment, or cottage industry.

Effective 1 January 2010 income cost levels are:

	monthly	annually
if the tax-payer receives income from one employment relationship	111,25	1335,00
if the tax-payer receives income from more than one employment relationship	111,25 from every employment relationship	But no more than 2002,05
if the tax-payer receives income from one employment relationship and the tax-payer's work location is different from the one he lives in and he does not receive any relocation benefit.	139,06	No more than 1668,72
if the tax-payer receives income from more than one employment relation and the tax-payer's work location is different than the one where he lives in and he does not receive a relocation benefit.	139,06 from every employment relationship	But no more than 2502,56

QUESTION 33

What are the basic social security regulations in Poland? How much social security is paid by employers, how much by employees? What other non-wage costs does an employer have to pay?

The detailed regulations governing individual areas of social security are contained in separate laws. The most important of them include:

- the Law of 13 October 1998 on the social insurance system (consolidated text: Journal of Laws of 2007 No. 11, Text 74 with further amendments),
- the Law of 17 December 1998 on pensions from the Social Insurance Fund (consolidated text: Journal of Laws of 2004 No. 39, Text 353 with further amendments),

- the Law of 28 August 1997 on organization and operation of pension funds (consolidated text: Journal of Laws of 2004 No. 159, Text 1667 with further amendments),
- the Law of 25 June 1999 on cash social insurance benefits in respect of sickness and maternity (consolidated text: Journal of Laws of 2005 No. 31, Text 267 with further amendments).

Deductions from social insurance to the Guaranteed Employee Benefits Fund, the Labor Fund and health insurance, (from 1 January 2008)

Type of social insurance	% total deduction	% of the deduction covered by:	
		Employee	Employer
Pension	19,52%	9,76%	9,76%
Disability	6%	1,5%	4,5%
Sickness	2,45%	2,45%	---
work accident insurance	1,67% <i>Note (a)</i>	---	1,67%
Health insurance	9% <i>Note (b)</i>	9%	
Fund of Guaranteed Employee Benefits	0,1%		0,1%
Labour\work Fund (unemployment)	2,45%		2,45%

a) Variable deduction depending on the industry sector.

b) Deduction is deducted from the amount due on personal income tax (7.75%)

Pension and disability insurance are no longer applicable in the year on amounts exceeding the limit set by the government on the cumulative gross salary figure. In 2010 this limit amounts to PLN **94 380,00**.

Registration with the Social Security Authorities (ZUS):

The employee is obliged to submit a registration form to the relevant Social Security Office (ZUS) within 7 days from:

- the date of employment of the first employee, or employment of an employee with ZUS obligations;
- commencement of other ZUS obligations in relation to the nature of the business

Included with the form are details of the entity itself and identification numbers.

Responsibilities of the Employer in regard to ZUS:

Employers must also register employees within 7 days of the commencement of employment/social insurance liability. The employer is responsible for preparing all the calculations, making the deductions and paying the contributions to ZUS each calendar month.

The employer must also submit the necessary ZUS forms and pay their portion of due contributions within 15 days of the following month.

Individuals paying their own contributions have 10 days from month end to submit the forms and settle amounts due.

Insurance cards:

By 31.12.2009 Social Insurance Institution stops issuing insurance cards. Since 01.01.2010 right to sickness coverage is confirmed by other documents determined by National Health Fund.

QUESTION 34

What are some of the main HR issues under the Polish Labour Code to consider?

MAIN DUTIES OF EMPLOYERS AND EMPLOYEES:

The employer is responsible, inter alia, for the following:

- 1) Conclusion of an employment contract in writing. This duty should be carried out before the first day of work or at the latest in the first day of work commencement.
- 2) Arranging a medical check-up by a certified doctor before the commencement of employment
- 3) Safety and Hygiene training for the employee
- 4) Informing the new employee about the employment conditions within 7 days of employment
- 5) Providing the employee with the internal work regulations
- 6) Registering the new employee with the Social Security Office within 7 days of employment
- 7) Registering the company with the State Sanitary Inspectorate and Labour Inspection within 30 days of hiring the first employee
- 8) Instructing the employee as to the scope of their duties
- 9) Ensuring safe and hygienic working conditions
- 10) Paying the correct and timely remuneration
- 11) Maintaining personal files
- 12) Keeping attendance records.

An employee is obliged in particular to:

- 1) Work conscientiously and carefully
- 2) Follow the orders of his/her superiors at work
- 3) Observe the work hours
- 4) Observe the workplace regulations
- 5) Observe safety and hygiene regulations and fire prevention regulations
- 6) Observe confidentiality regulations
- 7) Inform the employer of any absences from work

OBLIGATION OF MAINTAIN PERSONAL FILES

Per the Polish Labour Code all employers are obliged to maintain personal files. These files should be divided into three sections:

SECTION A: Personal documents regarding the job application

SECTION B: Personal documents regarding employment and employment history in the company

SECTION C: Documents regarding termination of the contract

Essential personal documents:

- 1) Personal questionnaire
- 2) Copies of work certificates from previous employers
- 3) Copies of diplomas or school reports
- 4) Employee's tax statements (PIT-2 form, statement regarding annual joint taxation etc.)
- 5) Copy of ID card
- 6) Signed employment contract
- 7) Documentation regarding maternity leave and paternity leave

ATTENDANCE RECORDS

Attendance records must be maintained for each employee in the Company. The information recorded should include normal work hours, real work hours, overtime, nightshift,, full paid holiday, unpaid leave, , sick leave, child care, business trips, other absences. The information is required to calculate salaries and benefits accurately.

FULL PAID HOLIDAY

Rights, terms and conditions for paid holidays are covered by the Labour Code and depend on various factors. Whilst there is a lot of conformity, cases should be considered individually.

Duration of leave

An employee is entitled to annual paid leave of between 20 to 26 days. Annual holidays are 20 work days for employees who have been employed in total for less than 10 years and 26 days if the employee has been employed in total for more than 10 years.

SICK LEAVE PAY

Generally, an employee is entitled to 80% of his remuneration for the first and all other days of his absence from work as a result of illness, supported by a doctor's note, up to the maximum number of days set in the labour and social security law. An employee is entitled to be paid the sick leave if they have been insured (sickness insurance) for at least continuous 30 days (obligatory insurance) or 90 days (voluntary insurance).

In certain cases such as accidents travelling to and from work, pregnancy or organ donor schemes an employee can receive 100% of their remuneration. The sick pay is payable to the employee for periods of incapacity for work or isolation due to communicable disease of a total duration not exceeding 33 days in a calendar year, and – if the employee has reached 50 years of age – not exceeding 14 days in a calendar year. The sickness allowance is payable by ZUS (Social Security Institution) from the 34th day of incapacity for work in a calendar year or from the 15th day (respectively) if the employee has reached 50 years of age.

In cases of hospitalisation the rate of sickness allowance can drop to 70%.

The current maximum paid sick leave is 182 days or 270 days for TB and sickness during pregnancy.

TERMINATION OF EMPLOYMENT

Before terminating an employment agreement an employer should consider the risk of a labour dispute. Legal advice should be considered prior to taking such action.

There are various ways to terminate a contract of employment:

- by mutual agreement of the parties,
- declaration by one of the parties with in compliance with the notice period,
- declaration by one of the parties without complying with the period notice,
- after lapse of the period it has been concluded for,
- on completion of the task it was concluded for.

There are various notice periods to be considered depending on the nature of the agreement (trial, indefinite, or definite) and the employment periods lapsed. This can range from 3 days to 3 months.

QUESTION 35

Are both the employer and employee liable for social security payments?

Yes. The employer contribution is quite significant and can add approximately 18,50% to the total cost of employing an individual. Meanwhile the employee deduction is also very significant.

The net amount received by an employee after tax and social security may be 60% - 70% of their gross salary, while the employer pays out approximately 118,50% of the gross salary. The difference between the amounts paid out by the company and that received by the employee goes to the Government. Refer question 28 above for more details.